

PENDING BOARD APPROVAL

PUBLIC MEETING MINUTES

October 11, 2007

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95811

Chair Neuwald called the meeting to order at 10:00 a.m.

Members Present

Karen L. Neuwald, Chair
Lilian S. Shek, Member
Sally M. McKeag, Member
Robin W. Wesley, Member
Tiffany Rystrom, Member

Staff Present

Tami Bogert, General Counsel
Les Chisholm, Division Chief, Office of the General Counsel
Bernard McMonigle, Chief Administrative Law Judge
Eileen Potter, Chief Administrative Officer

Call to Order

Chair Neuwald called the Board to order for a return to the open session of the August 16, 2007 Board meeting. She reported that the Board met in continuous closed session to deliberate on pending cases on the Board's docket, pending requests for injunctive relief, and pending litigation, as appropriate.

Since that open session in August, the Board has issued PERB Decision Nos. 1922, 1923-S, 1924, and 1925. In request for injunctive relief (I.R.) No. 527 (California Attorneys, Administrative Law Judges & Hearing Officers in State Employment v. State of California (Department of Personnel Administration)), the request was denied; I.R. No. 528 (California Fish & Game Wardens' Association v. California Statewide Law Enforcement Association), the request was denied; and I.R. No. 529 (California Correctional Peace Officers Association v. State of California (Department of Personnel Administration)), the request was withdrawn. A document containing a listing of the aforementioned decisions was made available at today's meeting.

Motion: Motion by Member Wesley and seconded by Member McKeag to close the August 16, 2007 public meeting.

Ayes: Neuwald, Shek, McKeag, Wesley, and Rystrom.

Motion Carried.

Chair Neuwald opened the meeting of October 11, 2007, and Member Wesley led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Rystrom and seconded by Member Shek that the Board adopt the minutes of the Public Meeting of PERB for August 16, 2007.

Ayes: Neuwald, Shek, McKeag, Wesley, and Rystrom.

Motion Carried.

Comments From Public Participants

None.

Staff Reports

a. Administrative Report

Regarding budget matters, Chief Administrative Officer Eileen Potter reported that the 2007-08 Governor's Budget was passed by the Legislature and signed by the Governor. There are a couple of control-section reductions pending as well as an unallocated reduction. The impact of those dollar figures to PERB is unknown at this time. Ms. Potter reported that Control Section 4.04 called for a reduction of the price increase previously included in PERB's budget of \$32,000, as well an unallocated reduction of \$31,000 which reduced the benefit and general salary increases agencies were to receive effective July 1, 2007 and December 1, 2007, for a total reduction of \$63,000. Also, preparation of the budget documents for the 2008-09 fiscal year are now underway. In that fiscal year, an unknown impact is expected from the above-mentioned control section and unallocated reductions.

Ms. Potter also reported on the site search for office space for the Los Angeles Regional Office. At this time, she is waiting for further information from the Department of General Services (DGS), Real Estate Division. She stated that requests for proposal were sent out on four spaces, which were visited by members from the Los Angeles Regional Office staff and herself, and that the landlord of the current space has submitted an ADA survey report to DGS. The report is more than 100 pages long and is being reviewed by DGS staff for compliance with State laws concerning ADA issues. Ms. Potter stated that she would relay further information as it becomes available.

Member Wesley inquired about the timeframe in which the requests for proposal were due from DGS.

Ms. Potter responded that there is a two-week timeframe and that she had expected a response by now.

b. Legal Reports

General Counsel Tami Bogert reported that the case processing and litigation reports had been distributed to the Board for its review. She summarized that during the months of August and September, 129 new unfair practice charges were filed, investigations were completed in 103 cases, and a total of 44 informal settlement conferences were held. During that same two-month period, 4 requests for injunctive relief were filed: one was withdrawn, one was set for expedited case processing, and two were denied by the Board.

Ms. Bogert reported on three litigation matters. In a new litigation case, Jurupa Community Services District v. PERB, Fourth Appellate District, Case No. E044031 (PERB Case No. LA-CE-224-M), the district filed a writ petition challenging PERB Decision No. 1920-M. An administrative record is due to the court from PERB next month and a briefing schedule will be set thereafter.

In a second litigation case, oral argument had been set for next Thursday in the two essential employees strike cases pending in the Sixth District Court of Appeal. (County of Contra Costa v. Public Employees Union Local One, et al. / County of Contra Costa v. CA Nurses Assn., et al., First Appellate District, Case Nos. A115095, A115118, Contra Costa County Superior Court Case Nos. MSC0601228, MSC0601227, PERB Case Nos. SF-LT-5-M, SF-LT-6-M; County of Sacramento v. AFSCME Local 146, et al. / County of Sacramento v. AFSCME Local 146, et al., Third Appellate District, Case Nos. C054060, C054233, Sacramento County Superior Court Case Nos. 06AS03704, 06AS03790, PERB Case Nos. SA-LT-2-M, SA-LT-3-M.)

In the third case, which was initiated in February, Los Angeles Unified School District v. PERB, Second Appellate District, Case No. B197043 (regarding PERB Decision Nos. 1884 and 1665), the district filed its opening brief last month and PERB's opposition brief is due and will be filed later this month.

Lastly, Ms. Bogert reported that efforts remain underway to fill the two staff counsel positions approved in the Fiscal Year 2007-08 Budget Act as well as the Senior Public Employment Relations Counsel position that is vacant in the Sacramento Regional Office.

Member Shek commended the General Counsel and her staff for their recent litigation activities, particularly in representing PERB before the Court of Appeal in a recent case in which the General Counsel's staff briefed the Court eloquently and effectively on the issues and reasoning of PERB's decision.

Ms. Bogert expressed appreciation and thanked Member Shek for her remarks.

Chair Neuwald concurred on behalf of the Board and acknowledged that it has been a busy time at PERB. She stated that staff at PERB had been working diligently and expressed the appreciation of the Board regarding the yeoman's effort of the General Counsel's Office in tracking the abundance of litigation cases in addition to its charge processing duties.

Chief Administrative Law Judge Bernie McMonigle reviewed the activities of the Division of Administrative Law. He reported that the division is currently staffed with six

administrative law judges (ALJ) and had been so staffed the last fiscal year. A seventh ALJ will join the division on October 31. He continued reporting on case processing that the ALJs have 15 decisions to write and 56 cases assigned for formal hearing. Hearings are currently being scheduled for December 2007 and January 2008. Mr. McMonigle stated that the average caseload per ALJ is nine for formal hearing, three decisions to be written, and that, in September, 11 new cases were assigned. So far this fiscal year, the ALJs have completed nine formal hearings, have held 40 days of hearings, and nine decisions have been rendered (of which five have become final). The caseload remains approximately 45% of the cases are from Los Angeles, 40% in Sacramento, and 15% in Oakland. ALJs from the north continue to travel to Los Angeles to assist with the caseload in that area. The seventh ALJ who will be joining the division has four cases assigned to him so far. With that, Chief ALJ McMonigle introduced the two new ALJs who were recently hired and in attendance at the meeting. He first introduced Shawn Cloughesy who joined PERB in August, and Phil Callis who will be joining PERB's staff on October 31. Between them, Mr. Cloughesy and Mr. Callis have a great deal of labor law experience as well as having presided over a tremendous number of hearings. Mr. Callis is reported to have held 1,500 hearings in 22 years as an ALJ at the State Personnel Board, and Mr. Cloughesy has had 13 years in his employment history. Before that, both had many years as labor attorneys in handling labor cases before PERB and at various levels.

Chair Neuwald welcomed the newly hired ALJs and acknowledged that PERB has a diversified and well-qualified group of ALJs. She mentioned an occasion, prior to their PERB employments, where she had worked with Mr. Cloughesy and appreciated how he approached things. She continued by stating that she knew Mr. Callis had an excellent reputation and that it was an honor to have them both join the PERB staff.

Member Shek thanked Chief ALJ McMonigle for conducting the selection of ALJs.

c. Legislative Report

Les Chisholm, Division Chief, Office of the General Counsel, reported on regulations and legislative matters that were pending and/or of importance to PERB. On regulations, he reported that with the Board's motion today to adopt the August 16, 2007 minutes, a completed rulemaking package would be submitted for approval to the Office of Administrative Law (OAL) next Monday. OAL would then have 30 workdays to review the package. With the Board's consideration of that rulemaking package, there were discussions on holding a subsequent workshop with interested parties to follow-up on issues and ideas that surfaced during that process, regarding proof of support in particular. PERB staff is in the process of researching those various issues and ideas, as well as setting the timeframe for this workshop discussion.

Regarding legislation, Mr. Chisholm reported that the Governor had until midnight Sunday to complete his review of pending legislation and that there was one bill pending that could have a direct impact on PERB. Mr. Chisholm went on to give a review of legislative changes/updates since PERB's last Public Meeting in August. Senate Bill 90 (Committee on Budget and Fiscal Review), which deals with a variety of issues concerning the State Chief Information Officer (SCIO), was both passed by the Legislature and signed by the Governor. The bill's impact on PERB is an amendment to the Dills Act that excludes

SCIO employees from coverage under that Act. The Legislature also completed its review and approval of two bills, Assembly Bill 553 (Hernandez), which deals with PERB's jurisdiction over strike issues and injunctive relief, and Assembly Bill 1164 (DeLeon), which provides for representation rights for child care providers. Assembly Bill 553 was vetoed by the Governor and will not become law. Assembly Bill 1164 was still pending before the Governor. If signed, there would be discussions at PERB's December Public Meeting regarding possible rulemaking and any budgetary issues.

Chair Neuwald asked Mr. Chisholm to give a brief summary of the bill regarding the right to self representation under EERA. She wanted to know what the impact of that change would mean to PERB.

Mr. Chisholm stated that Assembly Bill 1194 had been enacted and chaptered. His opinion was that this bill restored the pre-2000 status quo under EERA with respect to the right to self representation. Prior to 2000, there was self-representation language in the statute. There were a number of Board decisions which interpreted that prior language before it was deleted. In Woodland Joint Unified School District (2004) PERB Decision No. 1722 (Woodland), the Board held that there was no longer a right to self representation under EERA. He concluded that Assembly Bill 1194 simply restores the right to self representation under EERA and that in future cases, PERB could look to pre-Woodland cases as well as other decisions under the MMBA and Dills Act that similarly have a right to self representation provided therein.

Chair Neuwald took this time to compliment Mr. Chisholm on his legislative and regulatory work. She commended his ability to provide the Board with clear and concise briefing on sometimes very complex issues. Chair Neuwald especially thanked Mr. Chisholm for his expertise and detail to regulatory matters, and the General Counsel's Office for all of their hard work in both of these areas.

Motion: Motion by Member McKeag and seconded by Member Wesley that the Administrative, Legal Reports (including General Counsel and Chief Administrative Law Judge), and Legislative Report be received.

Ayes: Neuwald, Shek, McKeag, Wesley, and Rystrom.

Motion Carried.

Old Business

Chair Neuwald reported on the PERB conference held September 20 in Southern California at the University of California, Irvine. The conference attendance was about 250 people. She stated that there was great participation by the attendees, the panel members, and that the expertise in presentations was phenomenal. The feedback from the conference was highly favorable, participants came away enlightened about PERB processes and the conference was especially good for our local government constituents who have only recently become under PERB jurisdiction.

Member Shek agreed with Chair Neuwald on behalf of the Board regarding the time and effort put into coordinating the conference by PERB staff, including inviting the speakers, compiling

the written materials, and presenting the panels. She stated that the presentations were excellent and acknowledged the new learning experiences that come from these venues.

Member McKeag commended Regina Keith, Administrative Assistant, for her assistance and diligence in the preparations for the conference.

New Business

None.

General Discussion

There being no further business, the meeting is recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through December 13, 2007, when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Rystrom and seconded by Member Shek that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Neuwald, Shek, McKeag, Wesley, and Rystrom.

Motion Carried.

Respectfully submitted,

Regina Keith, Administrative Assistant

APPROVED AT THE PUBLIC MEETING OF:

Karen L. Neuwald, Chair